IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Oakwood Homes Corporation, et al.,	)	Case No. 02-13396 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
OHC Liquidation Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07-0799 (JJF)
	)	
Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.), the subsidiaries and affiliates of each, and Does 1 through 100,	)	**Re: Civil Docket No. 35**
	)	
Defendants.	)	

DECLARATION OF WHITMAN L. HOLT
IN SUPPORT OF THE ANSWERING BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S JURY TRIAL DEMAND

I, Whitman L. Holt, declare as follows:

1. I am over 18 years of age, and I have personal knowledge of each of the facts stated in this declaration. If called as a witness, I could and would testify as to the matters set forth below based upon my personal knowledge.

2. I submit this declaration in support of the *Answering Brief in Opposition to Defendants' Motion to Strike Plaintiff's Jury Trial Demand* filed by the OHC Liquidation Trust ("**Plaintiff**") in the above-captioned proceeding.

3. I am an attorney at the law firm of Stutman, Treister & Glatt, P.C., special counsel for Plaintiff in this proceeding.

4. Attached hereto as Exhibit "A" is a true and correct copy of the *Defendants' Response to Motion for Determination of Plaintiff's Rights to a Jury Trial*, which the defendants in this proceeding (collectively, "**Credit Suisse**") filed before the Bankruptcy Court on October 12, 2007 [Adv. Proc. No. 04-57060 (PJW), Docket No. 201].

5. Plaintiff's counsel deposed Mr. Jared Felt – an employee of the entity formerly known as Credit Suisse First Boston LLC, and the signatory of the proofs of claim underlying portions of this proceeding – on June 15-16, 2006. True and correct copies of relevant excerpts from the transcript of Mr. Felt's deposition, as well as the attendant errata sheets, are attached hereto as Exhibit "B."

6. Credit Suisse's counsel deposed Mr. Douglas R. Muir – a former officer of the Debtors in these bankruptcy cases, and an individual directly involved with the Debtors' securitization programs – on September 26-27, 2006. True and correct copies of relevant excerpts from the transcript of Mr. Muir's deposition, as well as the attendant errata sheet, are attached hereto as Exhibit "C."

7. During the week of October 21-27, 2007, I assisted in the preparation of various pre-trial materials in anticipation of a possible bench trial before the United States Bankruptcy Court for the District of Delaware, Walsh, *J.* Among those pre-trial materials was a statement of Plaintiff's case, which made clear that Plaintiff intends to seek compensatory damages of at least $50,000,000 at trial. On October 24, 2007, I transmitted certain of these materials, including the aforementioned statement, to, among others, Mary K. Warren, Esq. of Linklaters LLP, who is co-counsel for Credit Suisse.

8. During the course of the pre-trial preparation described in paragraph 7, an issue arose about whether the sole signatory/beneficiary of the purported contractual jury waiver – i.e., "Credit Suisse First Boston, New York Branch" ("**NY Branch**") – is among the defendant entities in this proceeding. Seeking clarity on the issue, my colleague, Scott H. Yun, Esq., and I had a telephone conference with two attorneys from Linklaters LLP (Mary K. Warren, Esq. and J. Justin Williamson, Esq.) on October 23, 2007. During the course of this call, I expressly asked Ms. Warren whether NY Branch is or is not a defendant entity in this proceeding. Ms. Warren refused to answer the question. In fact, Credit Suisse has, to date, steadfastly refused to adopt any definite position about whether NY Branch is or is not a party to this litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 19, 2008, at Los Angeles, California.

Whitman L. Holt

Exhibit "A"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re Oakwood Homes Corporation, et al., Debtors.	Chapter 11 Case No. 02-13396 (PJW) Jointly Administered
OHC Liquidation Trust, Plaintiff, v. Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.), the subsidiaries and affiliates of each, and Does 1 through 100, Defendants.	Adversary Proceeding No. 04-57060 **Re: Adv. Dkt. No. 198**

DEFENDANTS' RESPONSE TO MOTION FOR DETERMINATION OF PLAINTIFF'S RIGHTS TO A JURY TRIAL

Dated: October 12, 2007
Wilmington, Delaware

LINKLATERS
R. Paul Wickes
Mary K. Warren
Michael J. Osnato, Jr.
J. Justin Williamson
1345 Avenue of the Americas
New York, New York 10105
(212) 903-9000

Attorneys for the Defendants

RICHARDS, LAYTON & FINGER, P.A.
Mark D. Collins (No. 2981)
Russell C. Silberglied (No. 3462)
Lee E. Kaufman (No. 4877)
Christopher M. Samis (No. 4909)
One Rodney Square
920 North King Street
Wilmington, Delaware 1980
(302) 651-7700

Attorneys for Defendants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES & RULES

Defendants Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.) (collectively, "Defendants" or "Credit Suisse"), respectfully submit this Response to Plaintiff's Motion for Determination of Plaintiff's Rights to a Jury Trial.

INTRODUCTION

More than six years ago, Oakwood agreed by contract to waive a jury trial in any claims against Credit Suisse in connection with one of the transactions that lies at the heart of this dispute. Nearly three years ago the OHC Liquidation Trust (the "Trust") - the successor to Oakwood - chose to invoke the equitable claims resolution and adjustment powers of this Court to assert its defenses to Credit Suisse's proofs of claim and to assert "counterclaims" against Credit Suisse. More than a year ago the Trust asked this Court - not the District Court - to set a trial date. Now, on the eve of trial, the Trust, through their Motion for Determination of Plaintiff's Rights to a Jury Trial (the "Motion"), has recalled its "sacrosanct" right to a trial by jury and seeks to remove the case from this Court.

The Trust has no right to a jury trial on the claims it has brought against Credit Suisse which are, overwhelmingly,

equitable in nature. It certainly may not be heard at this late stage of the proceeding to demand a jury trial three years after invoking the equitable powers of this Bankruptcy Court. While we can well understand why the Trust might now regret the tactical choices it made when it filed these counterclaims, the fact that the Trust is abandoning large parts of the case it filed does not create a right to a jury trial where none exists.[1]

STATEMENT OF FACTS

A. The Proof of Claim and the Objections and Counterclaims

Defendant Credit Suisse Securities (USA), LLC ("CSS") filed four identical proofs of claim in the Oakwood Homes Corporation bankruptcy proceeding (the "Proof of Claim").[2] The Proof of Claim sought payment of fees and expenses under an agreement between CSS and Oakwood Homes that was executed on August 19, 2002 (the "Financial Advisory Agreement").

On November 15, 2004, the Trust filed an Objection to the Proof of Claim and Counterclaims for (1) Breach of Fiduciary Duty; (2) Negligence; (3) Unjust Enrichment; (4) Equitable

---

[1] Although the Trust continues to assert that Defendants will not consent to a jury trial in this Court (Motion at 4), there can be no dispute that jury trials cannot be conducted in the Bankruptcy Courts for the District of Delaware because the District Court has not specially designated the Bankruptcy Courts to hold jury trials. Official Committee of Unsecured Creditors of Integrated Health Servs. v. Elkins (In re Integrated Health Srvcs.), 291 B.R. 615, 622 (Bankr. D. Del. 2003) ("In this District, the Bankruptcy Judges have not been specially designated by the District Court to conduct a jury trial. Therefore, even if the parties consent, we may not conduct a jury trial.").

[2] Exhibit B to the Declaration of Brendan J. Murphy filed herewith (hereinafter cited "Murphy Decl. Ex. __.").

Subordination; (5) Avoidance and Recovery of 90 Day Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550; (6) Avoidance and Recovery of One Year Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550; (7) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548 and 550; (8) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544 and 550 and Applicable State Law; (9) Breach of Implied and Express Contract; and (10) Deepening Insolvency (the "Objections and Counterclaims").[3] (Murphy Decl. Ex. A. hereinafter cited as "Objections/Counterclaims ¶ __.".)

The Objections and Counterclaims sought recovery of almost $600 million in alleged preferential payments and fraudulent transfers, and sought disallowance or equitable subordination of CSS's claims.

The Objections and Counterclaims specified the relief sought as: (A) "For disallowance in its entirety of the CSFB Claims"; (B) "That CSFB's Claims be subordinated for all purposes to the claims of all other creditors in the Bankruptcy Case"; (C) "Disgorgement of all fees, sums, payments to CSFB an any profits

---

[3] The Trust elected to bring its Objections and Counterclaims as one action seeking the disallowance or equitable subordination of the Proof of Claim based on the Counterclaims, and chose to name multiple Credit Suisse entities as defendants. Those Credit Suisse Defendants were not named as separate entities providing separate and distinct services, but rather were alleged to be one unitary institution operating through its affiliates and subsidiaries. (Objections/Counterclaims ¶¶ 10-11.) Defendants deny such a characterization, but it was the Trust's choice to bring its Objections and Counterclaims in this posture, and it may not now at this late stage disavow that choice.

derived unjustly thereon by all the Oakwood Companies"; and (D) "Damages according to proof"; as well as avoidance of certain preferences and fraudulent transfers.

B. The Damages Disclosures

On May 1, 2006, pursuant to an order of this Court, the Trust served a supplemental damages disclosure pursuant to Federal Rule 26(a)(1). With respect to its fiduciary duty claim, the Trust asserted it was "entitled to recover from Credit Suisse all fees and other remuneration paid to Credit Suisse and to recover actual and consequential damages" and listed millions of dollars worth of fees paid to Credit Suisse, including fees associated with the Loan Assumption Program, fees paid in order to maintain the CSFB Warehouse Facility and the Servicer Advance Facility and the fees and costs of securitizations. (Murphy Decl. Ex. C at 4-6.)

With respect to damages associated with its claim for negligence, the Trust stated:

> Damages for this Counterclaim are substantially similar to the damages sought for breach of fiduciary duty, which are discussed above. The same facts that support the breach of fiduciary Counterclaim may support this Counterclaim. Nevertheless, this Counterclaim is a separate Cause of Action on which the Trust may recover damages.

(Murphy Decl. Ex. C at 6.)

With respect to the breach of implied contract claim, the Trust stated:

> The Trust asserts that well before the date of its written contract, CSFB acted as the financial advisor to the Debtors. The damages for breaching this implied contract include consequential damages suffered by the Debtors as a result of CSFB's failure to advise the Debtors to stop the asset-backed securitizations, which did not benefit the Debtors but only deepened their insolvency. The amount sought for CSFB's breach of the implied contract is substantially similar to the damage calculation for the Tenth Counterclaim (i.e., Deepening Insolvency), which is discussed below.

(Murphy Decl. Ex. C at 8.)

ARGUMENT

I. PROCEDURE

Defendants recognize that a number of courts have found it appropriate for the bankruptcy court to determine in the first instance whether a party is entitled to a jury trial. (See Motion at 5-6.) However, should this Court determine that there should be a jury trial, this issue will necessarily be addressed again by the District Court in the subsequent motion to withdraw the reference by Plaintiff. The District Court will decide the jury trial question *de novo*, as it is an issue of law. For reasons of efficiency and judicial economy, Defendants believe this issue should have been addressed in one motion to withdraw the reference. Notwithstanding this belief, Defendants do not object to the Trust's request for an initial determination of its jury trial rights by this Court. It should also be noted that, in footnote 1 of its Motion, Plaintiff waived any right to have its

Motion considered by the District Court should this Court rule against it.[4]

II. PLAINTIFF IS NOT ENTITLED TO A JURY TRIAL ON ANY CLAIMS

The Seventh Amendment preserves the right to a jury trial as it "existed under the English common law when the amendment was adopted." Markman v. Westview Instruments, Inc., 517 U.S. 370, 376 (1996)(quoting Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654, 657 (1935)). The Supreme Court has adopted a three part test to determine whether a right to a jury trial exists in the bankruptcy context. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 42 (1989). First, the court compares the cause of action to 18th Century actions in England prior to the merger of the courts of law and equity. Id. Second, the court examines the remedy sought and determines whether it is legal or equitable in nature. Id. If the court determines that the cause of action and the remedy are both equitable in nature, the moving party has no right to a jury trial. See, e.g. Liquidation Trust of Hechinger Inv. Co. v. Fleet Retail Fin. Group (In re Hechinger Inv. Co.), 327 B.R. 537, 543 - 46 (D. Del. 2005). If, however, on balance, the analysis of the first two factors indicates that a party is entitled to a jury trial, the court must decide whether Congress may or has assigned resolution of the relevant

[4] "If the Court determines the Trust has no right to a jury trial, the Trust will proceed to trial before this Court." (Motion at 7, fn 1.)

claim to a non-Article III court that does not use a jury as a fact finder. Granfinanciera, 492 U.S. at 42.

A. None of Plaintiff's Claims Give Rise to a Jury Trial

The Trust concedes that it is not entitled to a jury trial on its objection to CSS's Proof of Claim or issues directly related thereto, including breach of contract and the recovery of pre-petition payments relating to the financial advisory contract on which the Proof of Claim was based. (Motion at 3-4.) As for all of the other preference and fraudulent conveyance claims pleaded in the Objection and Counterclaims, the Trust has elected, at this late stage of the proceeding, to abandon them.

The remaining claims - on which the Trust now seeks a jury trial - are claims arising out of the relationship between Oakwood and CSS prior to August, 2002. Essentially, the Trust asserts that by virtue of providing underwriting services relating to Oakwood's securitization program, CSS took on "duties" - fiduciary or otherwise - to Oakwood and its creditors, and breached those duties by not forcing Oakwood into bankruptcy before its Board of Directors decided to file. It is undisputed that "actions for breach of fiduciary duty, historically speaking, are almost uniformly actions 'in equity'--carrying with them no right to trial by jury." In re Evangelist, 760 F.2d 27, 29, 31 (1st Cir. 1985) (Breyer, J.); In re Hutchinson, 5 F.3d 750, 757 (4th Cir. 1993); Stalford v. Blue Mack Transp.(In re

Lands End Leasing, Inc.), 193 B.R. 426, 433 (Bankr. D. N.J. 1996); Doyle v. Mellon Bank Nat'l Ass'n (In re Globe Parcel Serv., Inc.), 75 B.R. 381, 385 n.9 (Bankr. E.D. Pa.1987).[5]

Plaintiff's application of the second prong of Granfinanciera - the remedy sought - is simply wrong. By analogizing to the Second Circuit's opinion in Pereira, a case in which the plaintiff sought exclusively legal damages, Plaintiff misunderstands a critical distinction between the purely legal relief sought by the plaintiffs in that case and the mixed relief the Trust is seeking here. Pereira v. Farace, 413 F.3d 330, 339 (2d Cir. 2005). In Pereira, the defendants were directors who had allegedly permitted the CEO to enrich himself (the CEO was not a defendant). Id. at 334. The Second Circuit's holding depended entirely on the fact that since the director defendants has not themselves been enriched, the damages remedy was purely legal. Id. at 339 - 341. Here, in contrast, the Objection and Counterclaims and subsequent pleadings are replete with

[5] When assessing courts' traditional reluctance to convert classic equitable claims (such as breach of fiduciary duty) into legal claims, the law of Delaware is instructive. In Delaware, breach of fiduciary duty claims are exclusively heard in its Chancery Court, which is a constitutionally ordained court of equity. Omnicare, Inc. v. NCS Healthcare, Inc., 809 A.2d 1163 (Del.Ch.2002); Clark v. Teeven Holding Co., Inc., 625 A.2d 869, 878 (Del.Ch.1992) (Chancery "still retains jurisdiction to hear nearly all the claims for breach of a fiduciary duty"). The Chancery Court is charged with resolving breach of fiduciary duty claims because the broad, flexible and discretionary remedy analysis mandated by Delaware law upon a finding a breach of fiduciary duty is far removed from the traditional province of the jury. Id. Given this degree of discretion, any remedy imposed for a breach of fiduciary duty claim will inherently be equitable, even if it takes the form of a money judgment. Harman v. Masoneilan Int'l, Inc., 442 A.2d 487, 498 (Del. 1982).

allegations that the Defendants enriched themselves, and seeks classically equitable remedies, including disgorgement and equitable subordination.

The District of Delaware's opinion in Cantor v. Perelman is particularly illustrative of this distinction and should guide this Court's reasoning rather than Plaintiff's misapplication of Pereira. No. Civ. A. 97-586-KAJ, 2006 WL 3186666 (D. Del Feb. 6, 2006)(Jordan, J.). In Cantor, the court examined the plaintiff's pleadings and prayer for relief and determined that its prayer for "compensatory damages, including all benefits obtained by Defendants as a result of their breach of fiduciary duty" constituted a request for at least two forms of relief. One, "compensatory damages," was legal in nature, while the other, "unjust enrichment, i.e., the 'benefits obtained by the defendants,'" was equitable. Cantor, at * 5. Applying Granfinanciera, the court determined that plaintiff's breach of fiduciary duty claim was equitable and its requested relief was mixed law and equity. The district court further held that where a party seeks both equitable and legal relief for an equitable claim, the party's entire claim must be judged equitable, and no right to a jury trial should attach: "to weigh the factors differently would effectively ignore the historical factor, contrary to both the Seventh Amendment's purpose to preserve the right to a jury trial as it existed in 1791, and to the express

holding of Granfinanciera that history is to be accorded weight in the balancing." Cantor, at *9(internal citations omitted).[6]

Here, the Trust has alleged that Credit Suisse's breach of its fiduciary duty resulted in Credits Suisse "unjustly enrich[ing] itself at the expense of [Oakwood]" and as such, the Trust has "demand[ed] [CS]'s disgorgement of all fees and other remuneration unjustly paid to [CS] … and to recover consequential and actual damages." (Murphy Decl. Ex. A at ¶ 51.) In its Supplement to its Rule 26 (a)(1) Initial Disclosures the Trust further emphasized the mixed nature of the relief it seeks, stating that the Trust is "entitled to recover from [CS] all fees and other remuneration paid to [CS] and to recover actual and consequential damages." (Murphy Decl., Ex. C at 4.) As to its disgorgement relief, the Trust listed millions of dollars worth of fees paid to CS including fees associated with the Loan Assumption Program, fees paid in order to maintain the CSFB Warehouse Facility and the Servicer Advance Facility and the fees and costs of securitizations. (Murphy Decl. Ex. C at 4.)

Plaintiff has expressly conceded its mixed relief while fruitlessly attempting to distinguish the holding of In re Hechinger. (Motion at 14.) The Trust argues that it seeks much:

---

[6] The Cantor court also questioned the wisdom of the Second Circuit's overly expansive reasoning in Pereira, stating that its limited view of the scope of equitable relief "tears that definition from [its] key logical underpinning[s]." Cantor, 2006 WL 318666, at *8. Plaintiff seeks to do the very same thing here.

> broader damages from Credit Suisse. While quantification may *include* Credit Suisse's ill-gotten fees, those fees are not the entirety of the Trust's damages claims; the Trust also seeks damages for harm caused by Credit Suisse's misconduct (such as the extent to which certain transactions – including the so-called 'Lotus Transactions' – increased the Oakwood entities indebtedness and caused significant losses).

(Motion at 14.) Under any reading of the record, the Trust seeks a mixed form of relief here, which forecloses a jury trial on its breach of fiduciary duty claim. See Cantor, at *9.

As to Plaintiff's other claims that purportedly carry jury trial rights, the Court must look to the true nature of these claims to determine jury trial rights rather than Plaintiff's unsupported characterization of the claims. Dairy Queen, Inc. v. Wood, 369 U.S. 469, 477-78 (1962)("[T]he constitutional right to trial by jury cannot be made to depend upon the choice of words used in the pleadings.") Plaintiff's claims for breach of implied contract and negligence are not separate causes of action but rather are duplicative and superfluous reiterations of Plaintiff's breach of fiduciary duty claim.

As for the negligence claim, in its damages disclosures, Plaintiff made no attempt to segregate the negligence claim from its breach of fiduciary duty claim, stating "damages for this [negligence] counterclaim are substantially similar to the damages sought for breach of fiduciary duty ….

the same facts that support the breach of fiduciary [sic] Counterclaim may support this Counterclaim." (Murphy Decl. Ex. C at 6.) Moreover, it is black letter law that a negligence claim cannot exist without a duty running from defendant to plaintiff. Parrot v. Wells, Fargo & Co. (The Nitro-Glycerine Case),82 U.S. 524, 537 (1872) (stating that a party charging negligence must prove it by showing the defendant has violated some duty incumbent upon him); Hopkins v. Pusey, 475 F. Supp. 2d 479, 482 (D. Del. 2007) (finding that in order to state a claim for negligence under Delaware law one must allege that defendant owed plaintiff a duty of care). Here, the only duty that Credit Suisse could conceivably have owed to Oakwood was an alleged fiduciary duty, as no other duty has been plead or even implied by Plaintiff.

Plaintiff's breach of implied contract claim is similarly duplicative. The parties' relationship for the period after August 19, 2002 is governed by the Financial Advisory Agreement and, as the Trust concedes in its opening papers, any breach of that agreement is not triable to a jury. Therefore, the only implied contract that could exist, and any damages flowing from a breach of that implied contract, would necessarily exactly track the allegations of the breach of fiduciary duty claim.

B. The Trust's Adversary Proceeding is Part and Parcel of the Claims Allowance Process

Even if the first two prongs of the Granfinanciera test pointed to a jury right - and they do not - Plaintiff must still contend with the third prong. The Supreme Court recognized that certain matters which might have carried entitlement to a jury can still be "assigned" by Congress to a non-Article III court for resolution without a jury as, for instance, when they must be resolved as part of the "core" bankruptcy functions.

The jury trial limitation embedded in the third prong of the Granfinanciera test "has [typically arisen] in connection with a creditor's demands for a jury trial in actions brought by the trustee in bankruptcy." Billing v. Ravin, Greenberg & Zackin, 22 F.3d 1242, 1247 (3d Cir. 1994). That limitation arises from the fact that "when a cause of action 'falls within the process of the allowance and disallowance of claims,' neither the debtor's estate nor the defendant has a Seventh Amendment right to trial by jury 'because [the] claim has been converted from a legal one into an equitable dispute over a share of the estate.'" (Motion at 15 (quoting Billing v. Ravin, Greenberg & Zackin, 22 F.3d 1242, 1253 (3d Cir. 1994).) From this general principle, courts have concluded that counterclaims filed by a liquidation trust in response to a proof of claim that affect the allowance of a proof of claim are inextricably linked to the

claims allowance process, and are therefore subject to the bankruptcy court's equitable jurisdiction.[7] See id., at 1252; See also Frost, Inc. v. Miller, Canfield, Paddock & Stone (In re Frost), 145 B.R. 878, 882 (Bankr. W.D.Mich. 1992); Citicorp N. Am. v. Finley (In re Wash. Mfg. Co.), 133 B.R. 113, 115-17 (M.D. Tenn. 1991).

The Trust therefore concedes that if this Adversary Proceeding is interrelated with the equitable claims allowance process, it has no right to a jury trial. (Motion at 3-4.) The sole issue is thus whether this action implicates the claims allowance process. (Motion at 15.) The answer to that question is clear: The Objections and Counterclaims as filed by the Trust unquestionably invoked the equitable jurisdiction of this Court and submitted all of its claims to the claims allowance process for adjudication.

The Trust specifically objected to the Proof of Claim on the following grounds:

- "The CSFB-LLC Claims should be disallowed in their entirety pursuant to Bankruptcy Code section 502(b)(1) for

[7] The Supreme Court has squarely endorsed this proposition in the context of fraudulent conveyance or preference claims in an adversary proceeding. See Langenkamp v. Culp, 498 U.S. 42, 44-45 (1990); Granfinanciera, S.A.,492 U.S. at 58-59; Katchen v. Landy, 382 U.S. 323, 330 (1966). This Circuit has applied this principle to actions beyond preference and fraudulent conveyance claims, specifically to a legal malpractice action. Billing v. Ravin, Greenberg & Zackin, 22 F.3d 1242, 1253 (3d Cir. 1994). Other bankruptcy courts have also held that an affirmative claim that arises in or implicates the claims allowance process holds no jury trial rights. Frost, Inc. v. Miller, Canfield, Paddock & Stone (In re Frost), 145 B.R. 878, 882 (Bankr. W.D. Mich. 1992); Citicorp N. Am. v. Finley (In re Wash. Mfg. Co.), 133 B.R. 113, 115-17 (M.D. Tenn. 1991).

the reasons set forth in the Counterclaims below;" (Objections/Counterclaims ¶ 45.a.)

- "The CSFB Claims should disallowed in their entirety pursuant to 502(b)(4) based on the conduct above. CSFB-LLC's claim exceeds the reasonable value of its purported services;" (Objections/Counterclaims ¶ 45.b.)

- "The CSFB LLC Claims should be disallowed in their entirety because CSFB breached the Financial Advisory Agreement and caused significant harm to the Debtors including, but not limited to, grossly unnecessary fees, expenses and interest on the alternate DIP financing and other expenses. Alternatively, the contingency under which a fee for Financial Advisory Services would be paid was not satisfied;" (Objections/Counterclaims ¶ 45.d.)

- "In the alternative, the Plaintiff requests that the CSFB-LLC Claims, in part or in total, be equitably subordinated to all other claims against the Debtors, pursuant to the Bankruptcy Code section 510(c) for the reasons set forth in the Counterclaims below." (Objections/Counterclaims ¶ 45.e.)

There can be thus be no dispute that the Objections and Counterclaims invoked the equitable jurisdiction of this Court to disallow or otherwise equitably subordinate CSS's Proof of Claim. Plaintiff itself chose to use the claims process - by means of a purported "counterclaim" - to sue several defendants which had not filed claims. Plaintiff's case, as pleaded, is therefore inextricably linked to the claims allowance process insofar as allowance or disallowance of CSS's Proof of Claim cannot be resolved without reference to the conduct and claims underlying the counterclaims. The fact that Plaintiff seeks affirmative recovery on certain of those Counterclaims does not affect this conclusion. See Billing, at 1252 n.17.

Plaintiff's reliance on the handful of cases holding that a debtor or trustee is entitled to a jury trial on certain counterclaims is fundamentally misplaced, as the claims at issue in those cases were determined to be wholly unrelated to the claims allowance process.[8] Specifically, in Germain v. Conn. Nat'l Bank, 988 F.2d 1323 (2d Cir. 1993), the court found that, although the creditor had filed a proof of claim, the trustee's action was "not part of the claims-allowance process" and was not "integral to the reordering of relations among the parties."[9] Id.

---

[8] Plaintiff's reliance on authority finding that a creditor maintained a right to a jury trial on certain counterclaims asserted by debtors or trustees is equally misplaced. The Trust seeks to explain away the difference between a creditor-defendant seeking to preserve its jury trial right and a trustee-plaintiff by arguing that a "happenstance of pleading" should not make "legal claims" part of the claims allowance process. (Motion at 24.) However, this difference in procedural posture is fundamental. The cases addressing a creditors' right to a jury trial on claims unrelated to the proof of claim are focused on whether a creditor can be denied its constitutional right to a jury trial with respect to claims it never intended to resolve through the equitable powers of the bankruptcy court. By contrast, the Trust, as the counterclaims-plaintiff, is the master of its own proceeding, and it chose to pursue an adversary proceeding in this Court by objecting to CSS's Proof of Claim and seeking equitable subordination based on certain counterclaims. The Trust affirmatively chose to bundle its counterclaims into the objection to the Proof of Claim and to submit the entire controversy to the bankruptcy court for resolution in connection with the claims allowance process, knowing not only that it was invoking equity but that it filed the case in a court that is not permitted to conduct jury trials. The creditors in the cases cited by Plaintiff had no similar ability to select a forum or style of relief with respect to claims unrelated to a proof of claim. Authority addressing this issue is therefore inapposite. See Mirant Corp. v. Southern Co., 337 B.R. 107, 121 (N.D. Tex. 2006) (finding creditor's right to jury trial not forfeited for claims unrelated to the proof of claim and claims allowance process); R&F Intellectual Prop. Acquisition, Inc. v. Hantover, Inc. (In re Dynamic Tooling Sys.), No. 06-5476, 2007 Bankr. LEXIS 2090, at *19 (Bankr. D. Kan. June 12, 2007) (analyzing whether creditor forfeited jury trial rights on claims not related to the creditor's proof of claim); Rickel & Assocs., Inc. v. Smith (In re Rickel & Assocs., Inc.), 320 B.R. 513, 518 (Bankr. S.D.N.Y. 2005) (analyzing creditor's proof of claim on creditor's right to a jury trial on claims against it).

[9] Plaintiff's additional authority finding a jury trial right held by a debtor or trustee are grounded in similar reasoning. See WSC, Inc. v. Home

at 1329. The court reached this conclusion because the claims at issue were common law causes of action originally filed in an entirely separate state court proceeding, were not the underlying basis for the trustee's objection to a proof of claim,[10] and therefore did not implicate the claims allowance process.[11] Id. at 1325.

By contrast, the Trust freely elected to bring this Adversary Proceeding in the form of "Objections and Counterclaims" seeking to disallow or equitably subordinate the Proof of Claim based on the counterclaims. In so doing, the Trust unquestionably invoked the equitable jurisdiction of this

---

Depot, Inc. (In re WSC, Inc.), 286 B.R. 321, 329 (Bankr. M.D. Tenn. 2002) (finding claims asserted against non-creditor defendants were properly triable to jury, but claims asserted against creditor defendant that filed a proof of claim were not triable to jury because they were integrally related to the proof of claim); Hays v. Equitex, Inc. (In re RDM Sports Group), 260 B.R. 915, 925 (Bankr. N.D. Ga. 2001) (finding jury trial right held by trustee where claims "have [nothing] to do with the claims process and/or the restructuring of the debtor-creditor relationship" because they were asserted against third party non-creditor defendants solely to augment the estate).

[10] Moreover, as an emphasis on the importance that the trustee's claims were not interrelated with objections or subordination of claims, the Germain court went out of its way to establish that the trustee's claims had no effect on the claims allowance process, noting in a separate holding that it felt compelled to assume that the trustee would bring no claim for equitable subordination because such an action would be inconsistent with the trustee's demand for a jury trial on the affirmative claims. Id. at 1332. The court noted that if the trustee wished to seek equitable subordination of the proof of claim based on the facts alleged in the counterclaim, it could do so and waive any jury trial rights on the underlying claims. Id.

[11] This distinction was in fact critical to the court's analysis, as it distinguished the Supreme Court precedent in Katchen and Langenkamp on that basis. Id. at 1327. The Germain court reasoned that "[t]he very phrase 'claims-allowance process' suggests that the resolution of the dispute in which a jury trial is sought must affect the allowance of the creditor's claim in order to be part of that process." Id. at 1327. The court concluded that the common law affirmative claims, which were not tied to any objection to a claim, were entirely unrelated to the claims allowance process.

Court and submitted its claims against Defendants for resolution within the claims allowance process. We need not be concerned with whether there would be a different result had the Trust initially brought its affirmative claims in some other forum. It did not do so, and the Trust cannot walk away from its initial tactical choice to assert all of these causes of action as part of the claims process.[12]

---

[12] The Trust's Motion attempts to walk away from vast swaths of its Objections and Counterclaims to validate an otherwise groundless jury demand. However, once a dispute has been submitted to the equitable jurisdiction of the bankruptcy court in the claims allowance process, the party cannot revive any jury trial rights by disavowing its submission of the controversy to the bankruptcy court's jurisdiction. EXDS, Inc. v. RK Elec., Inc., 301 B.R. 436 (Bankr. D. Del. 2003) (creditor having filed proof of claim cannot withdraw claim to obtain jury trial in later adversary proceeding). In the context of a creditor seeking to revive jury trial rights by withdrawing a proof of claim, this Court has concluded that once a party has submitted a controversy to the equitable jurisdiction of the bankruptcy court, that jurisdiction is exclusive. The same must be true here. For strategic reasons, more than three years after the filing of the Objections and Counterclaims, and raising the issue for the first time less than 30 days before the scheduled trial date, Plaintiff now wishes to invoke an illusory right to a jury trial on certain claims and to remove the action from this Court. Plaintiff simply cannot do so. See EXDS, Inc., at 443 (holding that "by filing its proof claims [creditor] has caused its disputes . . . to be subject to the exclusive jurisdiction of this bankruptcy court and withdrawal of the proof of claim would not change that result"). In any event, the Trust has not moved to amend its Objections and Counterclaims so all of its counts remain on file, weeks before trial. Courts that have disagreed with the concept of waiver have primarily done so in the context of a third-party, non-creditor defendant that files counterclaims to an adversary proceeding brought by a debtor. In such cases, the critical distinction - which is plainly not at issue here - is the fact that no action, such as the filing of a proof of claim, has triggered the equitable claims allowance process. See e.g., NDEP Corp. v. Handl-It, Inc. (In re NDEP Corp.), 203 B.R. 905, 912 (D. Del. 1996)(Concluding non-creditor defendant had not waived jury trial right by asserting counterclaims where no proof of claim had been filed and case would have no effect on claims allowance or equitable distribution of estate).

III. PLAINTIFF HAS WAIVED ALL JURY TRIAL RIGHTS

A. PLAINTIFF WAIVED ANY JURY TRIAL RIGHTS BY FILING THIS PROCEEDING BEFORE THE BANKRUPTCY COURT

The Trust has waived any jury trial rights it might have had by asserting what the Trust now calls separate and distinct legal claims before the equitable jurisdiction of this Court. See, e.g., Schwartz v. Prudential Ins. Co. of Am. (In re: Kridlow), No. 97-35168DAS, 1999 WL 97939 (Bankr. E.D. Pa. Feb. 19, 1999) (a debtor/trustee plaintiff that chooses the bankruptcy forum when alternatives exist forfeits right to a jury trial).[13]

In Schwartz, the Bankruptcy Court for the Eastern District of Pennsylvania addressed a request by a debtor/trustee plaintiff for a jury trial on certain claims in an adversary proceeding brought in the bankruptcy court. Relying upon authority that a creditor who asserts counterclaims against a debtor in an adversary proceeding waives its jury trial rights by

---

[13] Other courts outside this Circuit have agreed with the reasoning or conclusion of the Schwartz court. Andrews v. AmSouth Bank (In re Andrews), No. 06-40016, 2007 WL 2819523, at *8 (Bankr. N.D. Ala. Sept. 26, 2007) (holding debtor not entitled to jury trial on counterclaims for, among other reasons, she "submitted her legal cause of action for resolution by a court of equitable jurisdiction"); Haile Co. v. R.J. Reynolds Tobacco Co. (In re Haile Co.), 132 B.R. 979, 981 (Bankr. S.D. Ga. 1991) ("By voluntarily selecting the bankruptcy court rather than state court as the forum in which to assert its state-law cause of action, plaintiff consented to this court's equitable jurisdiction and thereby waived its right to trial by jury."); Parsons v. United States (In re Parsons), 153 B.R. 585, 588 (M.D. Fla. 1993) (debtor voluntarily submitted adversary action to equitable jurisdiction of bankruptcy court relinquishing right to jury trial); Dimitri v. Granville Semmes, Civ. No. 00-2448, 2000 WL 1843495 (E.D. La. Dec. 14, 2000) (debtor-plaintiff voluntarily brought adversary proceeding in bankruptcy court thereby waiving right to trial by jury).

electing the bankruptcy court for resolution of such claims, the court concluded:

> The same principles which apply to creditors should apply to a debtor or a trustee. Thus, if such parties choose the bankruptcy forum when alternative forums exist, they should be prepared to forfeit their right to a jury trial in this forum. The claims asserted in the instant Proceeding clearly could have been asserted in state court and possibly also in federal district court in the first instance. Moreover, even if we reorganized the Plaintiffs' assertion of a jury demand, we would be compelled to relegate the Plaintiffs to the federal district court forum for trial as a result of our determination that this Proceeding is non-core. The only means for us to retain the Plaintiffs' chosen forum in this court is thus for us to strike their jury demand. [14]

Schwartz, at *5 (citations omitted). The result here is the same: The Trust voluntarily elected[15] to bring state-law-based

---

[14] In Schwartz, the court acknowledged the split among the Circuit Courts of Appeal concerning whether a debtor, by filing a voluntary petition for bankruptcy and seeking equitable resolution of the claims against it, effectively waives jury trial rights for its claims against other parties. Compare Longo v. McLaren (In re McLaren), 3 F.3d 958 (6th Cir. 1993) (filing of petition waives jury trial rights in debtor's claims against third parties); N.I.S. Corp v. Hallahan (In re Hallahan), 936 F.2d 1496, 1505 (7th Cir. 1991) (same); with Germain v. Conn. Nat'l Bank, 988 F.2d 1323, 1330 (2d Cir. 1993) (filing of petition does not waive debtor's jury trial rights); In re Jensen, 946 F.2d 369, 373-74 (5th Cir. 1991) (same). The Third Circuit has discussed but not resolved this split. This issue, however, is not implicated here because Plaintiff's waiver of its jury trial rights in connection with this action arises not from the general filing of a voluntary petition for bankruptcy, but rather from the Plaintiff's election to invoke the equitable jurisdiction of the bankruptcy court by asserting the very state-law-based claims in this forum as part of the claims allowance process.

[15] Assuming Plaintiff's new characterization of its claims was permissible, it is of critical importance that Plaintiff controlled the process of when, how, and where to file its state-law-based claims. Plaintiff chose to present those claims to this court for resolution in the claims allowance process and having done so, is charged with the knowledge of all implications of its choice of forum. See, e.g., Dimitri v. Granville Semmes, at *5 (finding debtor's waiver of jury trial rights and noting importance that "[t]his is not a situation where [debtor] was involuntarily joined as a party by another participant in the bankruptcy proceeding").

claims before this Bankruptcy Court for resolution even though alternative forums that would permit a jury trial on such claims were available. Having done so, Plaintiff waived its right to a jury trial on such claims. Id.; Haile Co., 132 B.R. at 981 ("By voluntarily selecting the bankruptcy court rather than state court as the forum in which to assert its state-law cause of action, plaintiff consented to this court's equitable jurisdiction and thereby waived its right to trial by jury.").[16]

B. PLAINTIFF HAS WAIVED ITS JURY TRIAL RIGHT BY CONTRACT

It is well settled that a jury trial right can be waived by contract if the waiver is knowing, voluntary and intelligent. Tracinda Corp. v. DaimlerChrysler AG (In re DaimlerChrysler AG Sec. Litig.), Civ. No. A 00-993-JJF, 2003 WL 22769051, at *2 (D. Del. Nov. 19, 2003), aff'd -- F.3d --, 2007 WL 2701965 (3d Cir. Sept. 18, 2007). See also Telum, Inc. v. E.F. Hutton Credit Corp., 859 F.2d 835, 837 (10th Cir. 1988) (recognizing that "[a]greements waiving the right to trial by jury are neither illegal nor contrary to public policy").

---

[16] Nor is this a case of an inadvertent waiver, as sometimes happens when a creditor submits to the jurisdiction of the bankruptcy court by filing a proof of claim. At the very time the Objections and Counterclaims was being prepared, and the Trust was making its strategic choices about forum and venue, the Trust's own counsel was deeply involved in the case of In re Hechinger Investment Co. in this Court, where the very issues at stake here - the ability of the bankruptcy court to hold a jury trial in a breach of fiduciary duty case - were being furiously litigated. In re Hechinger, 327 B.R. at 544-45. Of course, in that case Judge Robinson held that there was no right to a jury trial on a breach of fiduciary duty claim. Id.

In connection with the execution of the Loan Purchase Facility, Oakwood Acceptance Corporation, a debtor, agreed to be bound by the terms of the Class A Note Purchase Agreement dated February 8, 2001. That Agreement, which set forth the manner in which a Credit Suisse defendant would lend funds to a bankruptcy remote trust that would in turn purchase loans from Oakwood Acceptance Company, was crucial to the flow of funds under the Loan Purchase Facility. Section 9.14 of the Note Purchase Agreement - which is entitled "WAIVERS OF JURY TRIAL" - provides:

> EACH OF THE SELLER, THE SERVICER, THE ISSUER, THE DEPOSITOR, THE TRANSFEROR, THE AGENT AND THE PURCHASERS HEREBY IRREVOCABLE AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY OTHER DOCUMENT OR INSTRUMENT RELATED HERETO AND FOR ANY COUNTERCLAIM THEREIN.

(Murphy Decl. Ex. D at 53.) In a side agreement dated February 9, 2001, Oakwood Homes Corporation - the principal debtor here - acknowledged its obligations in connection with the Loan Purchase Facility and related documents, and agreed to the express terms of an identical jury trial waiver. (Murphy Decl. Ex. E at 6.)

The Trustee, as successor in interest to the debtors, is therefore foreclosed from seeking a jury trial on any claims "relating directly or indirectly to the Note Purchase Agreement or any of the contracts related thereto under the loan purchase facility." As outlined below, even assuming that Plaintiff's equitable claims carried a jury trial right (they do not), they

nonetheless cannot be tried to a jury because Plaintiff has plainly waived such a right as against a Defendant in this action.

This contractual waiver is most germane to the breach of fiduciary duty claim, which, as noted above, subsumes the other claims of negligence and breach of implied contract. Although Plaintiff's fiduciary duty claim has mutated substantially over time, one allegation has remained constant: by providing Oakwood with financing, Credit Suisse wrongfully perpetuated Oakwood's life and breached a "duty" to cause it to file for bankruptcy before it actually did so. (Objections/Counterclaims ¶¶ 19, 49, 53) The cornerstone of this theory is the Loan Purchase Facility, which Plaintiff's "standard of care" expert characterizes as so "vital to providing liquidity for Oakwood's securitization business" that if Credit Suisse "did not take over the role as lender, [Oakwood's] securitization business would have immediately collapsed." (Murphy Decl. Ex. F at 16-17, 36-39.)

Plaintiff thus alleges that at the moment Credit Suisse replaced Bank of America as provider of the Loan Purchase Facility in early 2001, Credit Suisse breached its duty by providing Oakwood with harmful and "value destructive" financing. Id. In addition to the "breach" at the inception of the Loan Purchase Facility, Credit Suisse breached its "duties" every time

it allowed Oakwood to use the facility to enable another securitization. (Murphy Decl. Ex. F at 16-17, 36-39.) So central to plaintiff's fiduciary duty claim is the Loan Purchase Facility that there could be no such claim absent these allegations. Consequently, the Trust must and should be held to the jury trial waiver contained in the Loan Purchase Facility documentation.

CONCLUSION

For all the reasons stated above, Defendants respectfully request that this Court determine that Plaintiff has no jury trial rights with respect to any claim in this action.

DATED: October 12, 2007
Wilmington, Delaware

Mark D. Collins (No. 2981)
Russell C. Silberglied (No. 3462)
Lee E. Kaufman (No. 4877)
Christopher M. Samis (No. 4909)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

-and-

R. Paul Wickes
Mary K. Warren
Michael J. Osnato, Jr.
J. Justin Williamson
LINKLATERS
1345 Avenue of the Americas
New York, New York 10105
(212) 903-9000

Attorneys for Defendants

Exhibit "B"

CERTIFIED COPY

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

IN RE:

OAKWOOD HOMES CORPORATION, ET AL.,

DEBTORS,

OHC LIQUIDATION TRUST,

PLAINTIFF,

vs.

CREDIT SUISSE FIRST BOSTON, A SWISS BANKING CORPORATION, CREDIT SUISSE FIRST BOSTON LLC, A DELAWARE LIMITED LIABILITY CORPORATION, CREDIT SUISSE FIRST BOSTON, INC., CREDIT SUISSE FIRST BOSTON (USA), INC., A DELAWARE CORPORATION AND A WHOLLY OWNED SUBSIDIARY OF CREDIT SUISSE FIRST BOSTON, INC., THE SUBSIDIARIES AND AFFILIATES OF EACH, AND DOES 1 THROUGH 100,

DEFENDANTS.

No. 02-13396(PJW)

VOLUME 1
PAGES 1 THROUGH 292

VIDEOTAPED
DEPOSITION OF:

JARED FELT
THURSDAY, JUNE 15, 2006
LOS ANGELES, CALIFORNIA

REPORTED BY:
FELIPE F. CARRILLO, CSR 9555

Q. In what way? How did they help OAC do that?

A. Credit Suisse had served as underwriter for those REMIC securities.

Q. What is your understanding of what services Credit Suisse had performed in its capacity as underwriter?

A. I just assumed that it was a typical underwriting relationship.

Q. In a typical underwriting relationship for a REMIC security, what does the underwriter do?

MS. WARREN: Objection to the form.

BY MR. CASTANARES:

Q. You may answer.

A. In understanding -- I've not underwritten a REMIC security, so I'll have to use my experience in underwriting other securities, but we primarily help to structure and sell those securities, we provide contact with buyers, and we help the company in understanding the process, and help assist them in preparing the documents to sell those securities. I'm struggling with what you are asking.

Q. I'm attempting to ask you the question using as closely as possible --

A. Uh-huh.

Q. -- the language you have used. So I'm not trying

to confuse you.

A. I think your shorthand is pretty broad sometimes.

Q. Did you have an understanding that, at that time -- I'm speaking now of the spring of 2001 up until the June 26th presentation -- that CSFB had any other kind of relationship with the Oakwood family of companies besides underwriting the REMIC securities?

MS. WARREN: Well, let me object to the form of this. Earlier in the deposition you said you were asking him about CSFB, which in your mind was the entity that signed the August 19th contract.

MR. CASTANARES: I'll rephrase the question.

MS. WARREN: Now you are asking about underwriting securities, and you are moving on to other relationships. So you need to be specific about your entity.

MR. CASTANARES: All right.

Q. Did you come to have any understanding in the spring of 2001 that any entity within the Credit Suisse or CSFB umbrella had any relationship with any entity in the Oakwood umbrella besides the underwriting of REMIC securities?

A. I work for Credit Suisse First Boston Corporation. I worked for CSFBC at the time. A separate legal entity CSFBI, CSFB, International, which

is separate, had provided a loan purchase facility to OAC.

Q. Is that commonly referred to as a warehouse line?

A. Yes, it is.

Q. All right. And what entity in the CSFB family was it that did the underwriting?

A. I'm not sure.

Q. Okay. Did you once know and have just forgotten or --

A. I assume that it's CSFBC, but I'm not sure. I'm not in that department.

Q. Okay. All right. Did you --

A. I only wish we were part of CSFBI. They were pretty profitable.

MS. WARREN: Mr. Felt, wait until there's a question pending.

THE WITNESS: Okay.

MR. CASTANARES: She wouldn't have let you answer that one if I asked it, so ...

Q. In the course of your preparation of the presentation and your making of that presentation, did you gather information from any sources outside of the Credit Suisse family of companies besides what was publicly available?

MS. WARREN: Could you read that back.

MR. CASTANARES: I'll rephrase it.

Q. In preparing for the June 26 presentation, you looked at publicly available information; correct?

A. Yes.

Q. Okay. And you don't recall whether or not you made any direct contact with the company to gather information; correct?

A. Yes.

Q. My question to you is, do you recall whether you had any other sources of information at that time?

A. I don't recall specifically, but typically I would have looked for research reports and other analyses from third-party sources about the company.

Q. Okay. And the research reports, are these the ones that Merrill Lynch or Barrister might issue recommending buy, sell or hold on the stock? Is that the kind of research reports you are talking about?

A. Those research reports that -- both stock and bond research reports as well as reports from rating agencies.

Q. Okay. Anything else you can think of that you looked at?

A. Again, I don't recall what I looked at for this situation. I'm instead speaking to broadly what we do.

Q. All right.

the fixed income department.

Q. Okay. And you're investment banking, and he's fixed income?

A. Yes.

Q. Okay. And you just can't remember what the percentages were or anything? Do you remember anything about that at all?

A. There's not that level of clarity.

Q. Okay. But I suppose if we went back and looked at the books, there are probably numbers written someplace; correct?

MS. WARREN: Objection to the form.

THE WITNESS: I don't know.

BY MR. CASTANARES:

Q. Okay. Did your group ever receive an allocation of revenue from any other group within CSFB, such as, for example, Mr. O'Driscall's group or the group that CSFBI did the warehouse loan with?

A. There was no -- I'm not aware of any allocations from fixed income or from CSFBI to investment banking for any prior transactions. There was a -- I didn't know whether or not our -- whatever the fees we did receive in 2002, if those were going to be held in abeyance for some reason, but I never fully understood what happened with the fees.

Q. Did you have any expectation at the time of the filing of the petition in bankruptcy that if the warehouse line were extended by CSFBI, your group would receive any allocation of income that CSFBI derived from that line of business?

MS. WARREN: Objection to the form.

THE WITNESS: First of all, the CSFBI was not the provider of the loan purchase facility.

BY MR. CASTANARES:

Q. Okay.

A. It was New York branch.

Q. Okay. So let me start again with my question.

A. That's fine.

Q. Okay. Okay.

A. But it wasn't CSFB. It was the New York branch, and I didn't know whether investment banking would receive any allocation of fees or monies earned from providing that loan purchase facility. I was hopeful, of course, but I did not know.

Q. Did it, in fact, do so?

A. I don't know.

Q. Okay. Is there --

A. (Inaudible) --

Q. If you wanted to know the answer to that question, how would you go about getting it?

A. You are asking about the magic hand within the firm. I don't know how it was.

Q. No, no. I'm only wanting to know whether accounting entries were made someplace or another, and I just want to know where to go -- I don't know where to ask your lawyer.

A. I don't know. It's not transparent within the firm.

Q. There is no piece of paper or electronic record that's made of these allocations?

A. I'm sure there must be.

MS. WARREN: Don't speculate if you don't know.

THE WITNESS: I don't know.

BY MR. CASTANARES:

Q. Have you seen such documents in the past?

A. I have not.

Q. You have never seen any allocation of income; correct?

A. I have not seen allocation of income.

Q. Okay. Would -- in the ordinary course, would Mr. Jacob be the one who saw such allocations in your group?

A. What he would know is the revenue for which we receive credit.

ERRATA SHEET

PAGE	LINE	CHANGE CORRECTION
16	20	"was" to "of" (incorrect)
19	12	"spending" to "pending" (typo)
20	21	"asset" to "asset in" (omitted word)
29	14	"Fihchra" to "Fiachra" (typo)
30	7	"F-I-H-C-H-R-A" to "F-I-A-C-H-R-A" (typo)
32	19	"Felt" to "felt" (incorrect)
47	21	"Felt" to "felt" (incorrect)
48	25	"Felt" to "felt" (incorrect)
59	2	"approaches the company or" to "approaches or" (incorrect)
65	9	"his" to "its" (incorrect)
91	13	"accept" to "except" (incorrect)
91	21	"at" to "that" (typo)
96	4	"hope" to "hoped" (typo)
97	10	"FCC" to "SEC" (incorrect)
103	16	"Felt" to "felt" (incorrect)
113	8	"Felt" to "felt" (incorrect)
129	9	"theses" to "these" (typo)
132	1	"suspected" to "suspect" (typo)
140	20	"sign" to "signed" (typo)
143	21	"15.th" to "15th" (typo)
156	2	"Not in" to "Not" (incorrect)
161	12	"GM2" to "GMT" (typo)
171	9	"want" to "went" (typo)

ERRATA SHEET

PAGE	LINE	CHANGE CORRECTION
190	21	"GAP" to "GAAP" (incorrect)
191	7	"GAP" to "GAAP" (incorrect)
203	7	"sister" to "sisters" (typo)
213	15	"loan" to "loans" (incorrect)
217	19	"secularization" to "securitization" (incorrect)
238	23	"graft" to "graph" (incorrect)
238	24	"graft" to "graph" (incorrect)
240	8	"decline" to "declined" (typo)
259	18	"range capital" to "Ranch Capital" (upper case)
259	24	"last" to "least" (typo)
260	6	"advise" to "advisor" (incorrect)
269	7	"non0critical" to "non-critical" (typo)

* * *

ACKNOWLEDGEMENT OF DEPONENT

I, Jared Felt, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any corrections appear on the attached Errata sheet signed by me.

Nov 15, 2006 _____

(DATE)

_____

(SIGNATURE)

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

CERTIFIED COPY

IN RE:

OAKWOOD HOMES CORPORATION, ET AL.,

DEBTORS,

OHC LIQUIDATION TRUST,

PLAINTIFF,

vs.

CREDIT SUISSE FIRST BOSTON, A SWISS BANKING CORPORATION, CREDIT SUISSE FIRST BOSTON LLC, A DELAWARE LIMITED LIABILITY CORPORATION, CREDIT SUISSE FIRST BOSTON, INC., CREDIT SUISSE FIRST BOSTON (USA), INC., A DELAWARE CORPORATION AND A WHOLLY OWNED SUBSIDIARY OF CREDIT SUISSE FIRST BOSTON, INC., THE SUBSIDIARIES AND AFFILIATES OF EACH, AND DOES 1 THROUGH 100,

DEFENDANTS.

No. 02-13396(PJW)

VOLUME 2

PAGES 292 THROUGH 497

VIDEOTAPED
DEPOSITION OF:

JARED FELT
FRIDAY, JUNE 16, 2006
LOS ANGELES, CALIFORNIA

REPORTED BY:
FELIPE F. CARRILLO, CSR 9555

was the warehouse?

A. Could you restate that question.

Q. Yes. In the week leading up to the filing of the petition in bankruptcy, for there to be a prearranged as distinguished from a free fall, there were three pieces that had to be put into place, correct, the DIP, the warehouse and Berkshire Hathaway?

MS. WARREN: Objection to the form.

THE WITNESS: Those are your words.

BY MR. CASTANARES:

Q. Are they correct?

A. No.

Q. How are they wrong?

A. Three things were important for the company to -- would be helpful to the company, but they could file at any time. Three things that would be helpful, we believed, and management believed, was a deal in principal, a DIP facility and access to a loan purchase facility, not necessarily on that day, but those were things that were important to the ongoing operations of the company.

Q. Okay. Well, you recall that the letter of intent that was signed by Berkshire Hathaway sometime on the 15th of November was made conditional on both a DIP and a warehouse; correct?

11:48:40 A. In order for -- as points that were highlighted
11:48:50 by Berkshire Hathaway as important for an ultimate
11:48:53 reorganization along these lines, Berkshire Hathaway
11:48:57 indicated that a DIP and a loan purchase facility were
11:49:01 important, yes.
11:49:02 Q. And the DIP lender was telling you that important
11:49:07 to it was a warehouse line; correct?
11:49:13 A. A loan purchase facility, yes.
11:49:16 Q. Okay. And the provider of the loan purchase
11:49:19 facility was telling you that important to it was a deal
11:49:23 with Mark, Berkshire Hathaway; correct?
11:49:25 A. Yes.
11:49:26 Q. So --
11:49:27 A. Actually, I don't know that. I really don't know
11:49:30 that.
11:49:30 Q. But that is what Exhibit 30 says, isn't it?
11:49:32 A. Exhibit 30 says that we thought that it was going
11:49:35 to be helpful. I don't know if New York branch ever
11:49:39 indicated that that was a condition.
11:49:40 Q. Okay. Well, it says that the warehouse will be
11:49:42 in question.
11:49:44 A. Again --
11:49:45 Q. That's what No. 30 says. Those are your words;
11:49:47 right?
11:49:47 A. My words now are that we thought that it would be

11:49:50 helpful, and Fihchra thought that it would be helpful,
11:49:53 in gaining approval from New York branch if there was a
11:49:56 deal in principal, yes.
11:49:58 Q. So each of these things was important or helpful
11:50:04 to the others; correct?
11:50:04 A. Yes.
11:50:04 Q. One of them was entirely within the control of
11:50:07 CSFB, wasn't it?
11:50:07 MS. WARREN: Objection to the form.
11:50:07 THE WITNESS: It was not.
11:50:08 BY MR. CASTANARES:
11:50:10 Q. Credit Suisse could have waived any conditions
11:50:12 and provided this warehouse line if it wanted to,
11:50:15 couldn't it?
11:50:15 MS. WARREN: Objection to the form.
11:50:17 THE WITNESS: You asked a specific question.
11:50:19 Was it within the control of CSFBC? It was absolutely
11:50:22 not.
11:50:22 BY MR. CASTANARES:
11:50:23 Q. All right. I will -- allow me to rephrase the
11:50:25 question.
11:50:25 One of them was entirely within the control of
11:50:27 the Credit Suisse family of companies; true?
11:50:29 MS. WARREN: Objection to the form.
11:50:31 THE WITNESS: Yes.

BY MR. CASTANARES:

Q. And that was the warehouse line; right?

A. Yes.

Q. And that's the one thing that CSFBC didn't get a signed letter of intent or term sheet on before bankruptcy; correct?

MS. WARREN: Objection to the form.

THE WITNESS: It was provided.

BY MR. CASTANARES:

Q. It didn't get a term sheet signed up before bankruptcy, did it?

A. It did not.

Q. Would you please refer to Exhibit 1. I believe it's still in front of you.

A. (Complies).

I'd like to go back. You stated that it was a requirement of a deal in principal. It was not.

Exhibit 1?

Q. Yes. We talked about this briefly yesterday. I believe --

MS. WARREN: Could I have a copy, please?

MR. CASTANARES: Pardon me?

MS. WARREN: Could I have a copy, please?

MR. CASTANARES: Do we have an extra copy of one here?

11:51:36 THE WITNESS: I'd like a break.

11:51:38 MR. CASTANARES: Oh, certainly.

11:51:39 THE WITNESS: Thank you.

11:51:40 THE VIDEOGRAPHER: We're going off the record. The time is 11:51.

11:51:42 (WHEREUPON, AT THE HOUR OF 11:51 NOON, THE LUNCH RECESS WAS TAKEN UNTIL 1:00 P.M. OF THE SAME DAY.)

13:06:08 THE VIDEOGRAPHER: We're back on the record. The time is 13:06.

13:06:12 BY MR. CASTANARES:

13:06:12 Q. Do you have Exhibit 1 in front of you, Mr. Felt?

13:06:14 A. I do.

13:06:15 Q. Okay. And you had an opportunity to review that document yesterday. Have you reviewed it again since then?

13:06:23 A. I have not.

13:06:23 Q. Okay. I honestly don't recall whether you read through the document entirely yesterday. It's a relatively long one, and I want to focus now on the minutes, not the presentation and memoranda attached.

13:06:41 Did you read through the entire set of minutes yesterday?

13:06:44 A. I did not.

13:06:45 Q. Okay. I'm going to ask you some -- I'll want to

ERRATA SHEET

PAGE	LINE	CHANGE CORRECTION (REASON)
298	17	"16th department" to "Fixed Income Department" (incorrect)
323	10	"It may have been a" to "It may have been" (incorrect)
327	16	"Bane" to "Bain" (incorrect)
327	19	"leverage to buy out" to " leveraged buyout" (incorrect)
327	24	"Bane" to "Bain" (incorrect)
327	25	"Bane" to "Bain" (incorrect)
328	10	"Bane" to "Bain" (incorrect)
344	23	"The color" to "Color" (incorrect)
345	11	"our" to "any" (incorrect)
363	21	"Felt" to "felt" (lower case)
364	22	"Felt" to "felt" (lower case)
376	11	"Weaver" to "Weber" (incorrect)
376	16	"Weaver" to "Weber" (incorrect)
395	8	"in" to "and" (incorrect)
405	11	"Felt" to "felt" (lower case)
408	11	"believe" to "believed" (incorrect)
412	4	"understand" to "understand," (omitted coma)
423	13	"Felt" to "felt" (lower case)
427	25	"didn't to be" to "didn't want to be" (omitted word)
446	21	"spectrum" to "Spectrum" (capitalize)
453	18	"GAP" to "GAAP"
482	7	"talk" to "talked" (incorrect)
489	3	"economic basis" to "economics based" (incorrect)

ERRATA SHEET

PAGE	LINE	CHANGE CORRECTION
490	11	"concepts" to "consents" (incorrect)
491	5	"Tyco" to "Taiko" (incorrect)
491	7	"Donaldson" to "Donaldson," (omitted coma)
491	8	"Lefton and Generat" to "Lufkin and Jenrette" (incorrect)

* * *

ACKNOWLEDGEMENT OF DEPONENT

I, Jared Felt, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any corrections appear on the attached Errata sheet signed by me.

Nov 15, 2006 _____

(DATE) (SIGNATURE)

Exhibit "C"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re: OAKWOOD HOMES CORPORATION, et al., Debtors.	Chapter 11 Case No. 02-13396 (PJW) Jointly Administered
OHC LIQUIDATION TRUST, Plaintiff, v. CREDIT SUISSE FIRST BOSTON, a Swiss banking corporation, CREDIT SUISSE FIRST BOSTON LLC, a Delaware limited liability corporation, CREDIT SUISSE FIRST BOSTON, INC., CREDIT SUISSE FIRST BOSTON (U.S.A.), INC., a Delaware corporation and a wholly owned subsidiary of CREDIT SUISSE FIRST BOSTON, INC., the subsidiaries and affiliates of each, and DOES 1 through 100, Defendants.	Adv. Proc. No. 04-57060 (PJW)

Videotape Deposition of DOUGLAS R. MUIR, VOLUME I
(Taken by Defendants)
Winston-Salem, North Carolina
September 26, 2006

Prepared by: K. Denise Neal
Registered Professional Reporter
Notary Public

guy, the only company out issuing asset backed securities with mobile home assets. The number of people doing it declined over time, but I could see what -- it's publicly available, what Clayton was paying CSFB or somebody else, what Greentree was paying, what Greenpoint was paying, other securitizers. So you could benchmark. That was the principal tool.

And again, a billion dollar deal probably has fees that in percentage terms are lower than a $500 million deal, but on balance you can benchmark and find out where the market is, not only what CSFB was charging but what other banks were charging.

Q. And you could find this information from what appeared in the public documents, for instance, on the -- on the face of the offering memorandum?

A. Yes. If it's a public document, they'd file the prospectus with the SEC. You could go look it up.

Q. Is that how you got your information to benchmark?

A. Generally, yes. It's publicly available.

MR. CASTANARES: Just like to caution the witness to let the question finish before beginning to answer, please. Thank you.

Q. (By Ms. Warren) Were you generally successful in -- in setting a fee that you thought was appropriate for -- to compensate Credit Suisse for its underwriting services?

A. Yes.

Q. How was Credit Suisse compensated for providing the OMI Note Trust facility?

A. There were several elements. I'm doing this from memory, but I think I have this right. There was a rate of interest applied to amounts that OMI Trust borrowed from CSFB. So we paid them interest on the outstandings as a form of compensation.

There was a fee letter or more than one fee letter that specified a monthly fee that was to be paid to CSFB, and it was a fixed fee. And then in addition when the transaction was first put together in February of 2001, part of the consideration was CSFB received a warrant to acquire Oakwood shares.

Q. I didn't hear the last part. A warrant to acquire --

A. Shares, common shares of Oakwood.

Q. Common shares. Did you negotiate the compensation arrangement with Credit Suisse for the OMI Note Trust?

A. I discussed it with Fiachra. We discussed it a lot internally. We discussed it with the board.

Q. Were you the point person for dealing with Credit Suisse on this issue?

A. I was involved. I think -- I think Bob Smith was also involved.

Q. What were Oakwood management's criteria for determining how much they thought it would be appropriate to pay Credit Suisse for the OMI Note Trust facility?

A. Well, I can't speak for others. It was an interesting negotiation in that it was not a transaction in which there were a half a dozen credit providers lined up at the door, each of which was offering to do this transaction. At the time CSFB was the only game in town.

It's difficult to negotiate with someone when you are trying to get them to bid against themselves. So we did the best we could and ultimately agreed on a package that we agreed was in our best interests to do and that our board agreed that it was in our best interests to do it.

Q. How did Oakwood's management determine that the package was acceptable?

A. Again, I can't speak for anyone else, but

at the time --

Q. Well, I'm asking for your understanding based on your conversations with others. I'm not asking to go into their heads, but that's the basis of my question.

A. I don't have a recollection of conversations with others. At the time the Bank of America facility was due to expire. There was immense pressure from Bank of America to take them out, to retire that facility. There were tremendous fees being charged by Bank of America for failing to take them out.

CSFB was the only game in town. It was a critical facility, had to get done. And on -- in that -- in the light of those circumstances I concluded that it was a deal that should get done.

Q. Were the fees for the Credit Suisse loan purchase facility approximately what B of A had been charging?

A. No.

Q. Were they higher?

A. Yes.

Q. Did you apply any pressure on Credit Suisse to take over the loan purchase facility from Bank of America when Bank of America informed you

that it wanted out?

A. I wouldn't characterize it as pressure, but we certainly -- having a successor facility to the Bank of America warehousing facility was of critical importance. While I don't remember any specific conversations with CSFB, I know there were a number of them in which, you know, I was hopeful that CSFB working through Fiachra would be able to serve up a proposal to provide that liquidity that would work for them and would work for us.

Q. Well, how was the subject raised with Credit Suisse? Did you raise it?

A. Again, I don't have any recollection of any specific conversations with CSFB during the time we were contemplating that agreement. My recollection at the time was I was clearly aware that we were under pressure from B of A and I would have discussed that with Fiachra.

Q. Did you ever tell Mr. O'Driscoll in words or substance that Credit Suisse had better help out on this bank facility or Oakwood would terminate all or part of the securitization relationship?

A. I don't remember ever telling him that. I do remember but I can't tell you when there were -- there was a conversation with Fiachra somewhere along

DEPOSITION OF DOUGLAS R. MUIR, VOLUME I/KDN

I do hereby certify that I have read all questions propounded to me and all answers given by me on the 26th day of September, 2006, taken before K. Denise Neal, and that:

1) There are no changes noted.

2) The following changes are noted:

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, which reads in part: Any changes in form or substance which you desire to make shall be entered upon the deposition...with a statement of the reasons given...for making them. Accordingly, to assist you in effecting corrections, please use the form below:

Page No. 44 Line No. 5 should read: "an advance Company" should read "in a finance Company"

Page No. Line No. should read:

Page No. 145 Line No. 22 should read: "liquidated" should be "unliquidated"

Page No. Line No. should read:

Page No. 150 Line No. 44 should read: "in Durham" should be "& Durham"

Page No. Line No. should read:

Page No. 159 Line No. 3 should read: "nonbonking" should be "nonbinding"

Page No. Line No. should read:

Page No. Line No. should read:

DEPOSITION OF DOUGLAS R. MUIR, VOLUME I/KDN

Page No. Line No. should read:

Page No. Line No. should read:

Page No. Line No. should read:

Page No. Line No. should read:

Page No. Line No. should read:

Page No. Line No. should read:

Page No. Line No. should read:

If supplemental or additional pages are necessary, please furnish same in typewriting annexed to this deposition.

DOUGLAS R. MUIR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Oakwood Homes Corporation, et al.,	)	Case No. 02-13396 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
OHC Liquidation Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07-0799 (JJF)
	)	
Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.), the subsidiaries and affiliates of each, and Does 1 through 100,	)	
	)	
Defendants.	)	
	)	

CERTIFICATE OF SERVICE

I, Kathryn S. Keller, of Campbell & Levine, LLC, hereby certify that on February 19, 2008, I caused a copy of the **Declaration of Whitman L. Holt in Support of the Answering Brief in Opposition to Defendants' Motion to Strike Plaintiff's Jury Trial Demand**, to be served upon the individuals listed below via the method indicated.

Lee E. Kaufman, Esq. Russell C. Silberglied, Esq. Richards, Layton & Finger, P.A. One Rodney Square 920 North King Street Wilmington, DE 19801 **VIA HAND DELIVERY**	Mary K. Warren, Esq. Michael Osnato, Esq. J. Justin Williamson, Esq. Paul R. Wickes, Esq. Linklaters 1345 Avenue of the Americas Nineteenth Floor New York, NY 10105 **VIA FEDERAL EXPRESS**

Dated: February 19, 2008

CAMPBELL & LEVINE, LLC

/s/ Kathryn S. Keller

Kathryn S. Keller (No. 4660)
800 N. King Street, Suite 300
Wilmington, DE 19801
(302) 426-1900